

Message Text

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ACTION NEA-16

INFO OCT-01 IO-14 ISO-00 DEAE-00 CIAE-00 INR-11 JUSE-00

NSAE-00 RSC-01 SNM-02 SY-04 TRSE-00 USIA-15 NSC-07

SCI-06 OMB-01 L-03 SS-20 DODE-00 PA-04 PRS-01 SP-03

HEW-08 AID-20 AGR-20 DRC-01 /158 W

----- 105115

R 300234Z AUG 74

FM AMEMBASSY KATHMANDU

TO SECSTATE WASHDC 9332

INFO AMEMBASSY NEW DELHI

USMISSION GENEVA

LIMITED OFFICIAL USE SECTION 1 OF 2 KATHMANDU 3557

E.O. 11652: N/A

TAGS: NARC

SUBJECT: NARCOTICS LEGISLATION

1. MINISTER BHEKH THAPA PRESENTED NARCOTICS CONTROLL BILL TO NEPAL'S NATIONAL PANCHAYAT FOR APPROVAL ON AUGUST 18. EMBASSY HAS MANAGED OBTAIN IN CONFIDENCE COPY OF BILL, WHICH HAS NOT YET BEEN RELEASED TO PUBLIC OR PRESS. TEXTUAL REFERENCES ARE TO EMBASSY UNOFFICIAL TRANSLATION. (NEPALI TEXT AND TRANSLATION POUCHED LORTON, NEA/INS.)

2. BILL IS PATTERNED ON DRAFT PREPARED BY UN EXPERT ALFONS NOLL, ALTHOUGH LESS SPECIFIC IN SOME AREAS. NARCOTICS DEFINED IN BILL TO INCLUDE GANJA, MEDICALLY USEFUL GANJA, OPIUM, MEDICALLY USEFUL OPIUM, COCA'S PLANT, NATURAL OR ARTIFICIAL NARCOTICS AND PSYCHOTROPIC SUBSTANCES. FUNCTIONS PROHIBITED BY THE LAW INCLUDE CULTIVATION OF GANJA, OPIUM OR COCA; PRODUCTION OF LEAVES OF GANJA, OPIUM, COCA, OR OTHER NARCOTICS; MANUFACTURE OR PREPARATION OF ANY NARCOTICS; SALE AND DISTRIBUTION OF NARCOTICS; EXPORT OR IMPORT OF NARCOTICS; AND PURCHASE, HOARDING, STORING, USE OR

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TRANSPORTATION OF NARCOTICS.

3. IN PENALTIES SECTION OF DRAFT LAW PENALTY FOR CULTIVATION AND PRODUCTION IS IMPRISONMENT OF FROM THREE MONTHS TO THREE YEARS WITH FINE NOT TO EXCEED RS. 5,000; PENALTY FOR PREPARATION OR SALE AND DISTRIBUTION OF NARCOTICS WOULD BE IMPRISONMENT FOR NOT LESS THAN ONE YEAR AND NOT OVER 14 YEARS, WITH FINE NOT TO EXCEED RS. 100,000; PENALTY FOR EXPORT-IMPORT OF NARCOTICS WOULD BE IMPRISONMENT FOR NOT MORE THAN ONE YEAR, WITH FINE NOT TO EXCEED RS. 1,000; ADDITIONAL PENALTIES ARE PRESCRIBED FOR SECOND OFFENDERS.

4. THERE ARE SEVERAL AREAS IN LAW WHICH COULD PROVIDE POSSIBILITIES FOR LOOPHOLES, DEPENDING UPON MANNER IN WHICH LAW IS IMPLEMENTED. THE GON CAN FOR EXAMPLE FORMULATE RULES TO ADMINISTER "TILL THE PRESCRIBED PERIOD" THE PRODUCTION, STORING, SALE AND DISTRIBUTION OF NATURAL WILD GANJA. THIS IS EVIDENTLY THE "PHASING PROVISION" DESIGNED TO DEAL WITH THE PROBLEM, IDENTIFIED BY BOTH THE GON AND THE UN, RELATING TO THE WESTERN HILLS AREA WHERE WILD GANJA IS SAID TO BE A MAJOR ECONOMIC FACTOR FOR MANY SMALL FARMERS. THE LAW ALSO PROVIDES THAT GON CAN PERMIT, IN DISTRICTS OF THE NORTHERN HILL REGIONS TO BE SPECIFIED IN GON REGULATIONS, THE CULTIVATION OF GANJA FOR PRODUCTION OF FIBER FOR USE IN CLOTHES, RUGS, BAGS AS LONG AS NARCOTICS ARE NOT PRODUCED. FURTHER, THE LAW PROVIDES THAT SELLERS WHO HAVE PREVIOUSLY ACQUIRED NARCOTICS UNDER LICENSE, AND WHO SUBMIT WITHIN A PRESCRIBED PERIOD THE REQUIRED DESCRIPTION OF NARCOTICS STOCKS WHICH THEY HOLD, WILL BE PERMITTED UNDER RULES TO BE PRESCRIBED TO THE GON TO STORE, PURCHASE, SELL AND TRANSFER NARCOTICS FOR PERIOD OF TWO YEARS FOLLOWING ENACTMENT OF LEGISLATION.

5. BILL PROVIDES WIDE AUTHORITY FOR POLICE TO ENTER AND SEARCH, SEIZE AND ARREST IN ORDER TO CARRY OUT INTENT OF LAW. SEPARATE SECTION, HOWEVER, PROVIDES FOR FINE OF \$500 AND IMPRISONMENT OF UP TO SIX MONTHS IF THIS AUTHORIZATION IS ABUSED BY ENFORCEMENT OFFICERS. (WE RECALL THAT UN EXPERT NOLL HAD EXPRESSED CONCERN THAT LATTER PROVISION MIGHT ACT AS DETERRENT TO EFFECTIVE POLICE WORK WHEN HE SAW SIMILAR CLAUSE IN EARLIER NEPALESE DRAFT OF NARCOTICS LEGISLATION.) LIMITED OFFICIAL USE

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6. ON ADMINISTRATIVE SIDE, BILL TRANSFERS AUTHORITY FOR NARCOTICS CONTROL TO HOME MINISTRY FROM FINANCE MINISTRY, WHICH PREVIOUSLY HAD RESPONSIBILITY RELATING TO NARCOTICS AS RESULT OF EXCISE DUTIES LEVIED ON PRODUCTION AND SALE OF HEMP, OPIUM, HASHISH. WITH SUCH ACTIVITIES NOW BANNED, AUTHORITY FOR NARCOTICS HAS BEEN TRANSFERRED TO HOME MINISTRY AND A NARCOTICS CONTROL ADMINISTRATION WILL BE

ESTABLISHED IN THAT MINISTRY.

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7. COMMENT: ALTHOUGH MUCH WILL OBVIOUSLY DEPEND ON ENFORCEMENT AND A CONTINUING DETERMINATION ON THE PART OF THE GON TO EFFECTIVELY CONTROL PRODUCTION AND TRAFFICKING OF DRUGS IN NEPAL, OUR OVERALL JUDGMENT AT THIS POINT IS THAT INTRODUCTION OF THIS LEGISLATION IS A BIG STEP FORWARD. IF PASSED IT WILL PROVIDE VASTLY IMPROVED JURIDICAL BASE FOR NARCOTICS CONTROL IN NEPAL, ENABLING GON TO BEGIN SETTING UP EFFECTIVE ENFORCEMENT MECHANISMS. WIDE COVERAGE AND PENALTIES AUTHORIZED UNDER BILL SHOULD PROVE REAL DETERRENT TO TRAFFICKING AND WOULD REPRESENT REAL PROGRESS WHEN COMPARED TO PARTIAL COVERAGE AND EXCEEDINGLY LENIENT PENALTIES UNDER EXISTING LAWS AND REGULATIONS. WE BELIEVE THAT IT PROBABLY WOULD NOT HAVE BEEN POSSIBLE INTRODUCE LEGISLATION WITHOUT PROVIDING SOME FORM OF RELIEF FOR FARMERS MOST AFFECTED BY PROHIBITION. RECENT STUDY BY NATIONAL PLANNING COMMISSION INDICATED THAT 34,000 FARMERS WERE ENGAGED IN HEMP CULTIVATION IN TERAJ REGION AND THAT BAN ON CULTIVATION WOULD RESULT IN TOTAL EARNINGS LOSS OF APPROXIMATELY \$6.5 MILLION IN TERAJ. SIMILAR STUDIES IN HILL REGIONS INDICATED THAT SALE OF GANJA WAS OFTEN ONLY

SOURCE OF ANNUAL CASH INCOME FOR FARMERS. (IN REVIEWING
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PREVIOUS DRAFTS OF LEGISLATION, UN EXPERTS HAD EXPRESSED
CONCERN TO US OVER IMPACT OF IMMEDIATE IMPLEMENTATION OF
LEGISLATION IN HILL AREAS.) UNDER SUCH CIRCUMSTANCES
GON HAS BEEN UNDER PRESSURE TO FIND MEANS OF MITIGATING
ECONOMIC HARDSHIPS RESULTING FROM NARCOTICS CONTROL IN
POOREST AREAS OF COUNTRY. IN THIS CONNECTION HIS MAJESTY
INDICATED IN HIS DISCUSSION WITH AMBASSADOR THAT INTRODUCTION
OF NARCOTICS LEGISLATION HAD BEEN DELAYED FOR SOME SIX
MONTHS WHILE GOVERNMENT SOUGHT ANSWERS TO PROBLEMS POSED
BY HARVESTING AND SALE OF GANJA IN WESTERN HILLS OF NEPAL.
WHILE REMARKS BY HIS MAJESTY AND OFFICIALS OF GON SUGGEST
THAT THERE IS SUPPORT FOR THE ENACTMENT OF THIS BASIC
NARCOTICS LEGISLATION, WE DO NOT YET KNOW WHETHER IT WILL
BE APPROVED DURING REMAINING TWO WEEKS OF CURRENT SESSION
OF PANCHAYAT, OR, IF SO, WHETHER IT IS LIKELY TO BE
ADVERSELY MODIFIED IN THE PROCESS. WE WILL CONTINUE TO
REPORT AND COMMENT ON DEVELOPMENTS.
CARGO

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